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Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Deployment of Wireline Services Offering)
Advanced Telecommunications Services)
_____)

CC Docket No. 98-147

REPLY COMMENTS

The Telecommunications Resellers Association ("TRA"),¹ through undersigned counsel and pursuant to Section 1.429(f) of the Commission's Rules, 47 C.F.R. §1.429(f), hereby replies to comments of parties opposing the Petition for Partial Reconsideration and/or Clarification of the *First Report and Order*, FCC 99-48, CC Docket No. 98-147, Deployment of Wireline Services Offering Advanced Telecommunications Capability (rel. March 31, 1999) (the "*Order*"), filed by Sprint Corporation on June 1, 1999 (the "*Petition*"). In its Petition, Sprint seeks a reaffirmation from the Commission of the validity of the collocation obligations set forth in Section d. of the *Order*. Sprint also asks the Commission to remedy two areas which present ample opportunity for incumbent local exchange carrier ("LEC") manipulation of collocation processes to the detriment of competitive advances: (1) the ability of an incumbent LEC to reserve to itself any amount of central office space for unspecified future use, with no obligation to demonstrate either

¹ A national trade association, TRA represents more than 800 entities engaged in, or providing products and services in support of, telecommunications resale. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry, and to protect and further the interests of entities engaged in the resale of telecommunications services. TRA is the largest association of competitive carriers in the United States, numbering among its members not only the large majority of providers of domestic interexchange and international services, but the majority of competitive local exchange carriers as well.

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the *bona fides* of the space reservation or the time within which such space will be put to use by incumbent LEC; and (2) the lack of any outside deadline within which collocation arrangements must be completed. The first, if taken to its logical extreme, would allow the incumbent LEC to effectively "exhaust" its central office space immediately on nothing more than a nebulous assertion that the space will be needed at some future time for some undisclosed purpose; the second would permit the incumbent LEC to delay completion of collocation requests indefinitely, to well beyond the point where the business objectives of the requesting competitors would be hopelessly hindered.

No opposing commenter sufficiently addresses, much less justifies, incumbent LEC refusal to comply with the straightforward collocation obligations which are the subject of the Petition. The Commission should take this opportunity to confirm that the straightforward statements set forth in the Section d. of the *Order* are not subject to the creative interpretation of incumbent LECs.² Further, the Commission should not hesitate to impose the reasonable limits advanced by Sprint on incumbent LEC reservation of space and the establishment of a minimum time period for completion of collocation arrangements in furtherance of the underlying goal of the promotion of competition.

In the Petition, Sprint asks for Commission clarification of the requirement set forth in the *Order* that incumbent LECs must permit new entrants to construct or obtain adjacent space for collocation when available space within a particular central office is exhausted. The necessity for this clarification arises out of BellSouth's direct contravention of the Commission's rules as set

² United States Telephone Association ("USTA") urges the Commission to "take no further action regarding collocation" until the Court of Appeals for the District of Columbia Circuit resolves a consolidated appeal of the *Order*. USTA Opposition at 2. TRA will not otherwise address USTA's 3-page Opposition to Sprint's Petition but notes that until such time as a party requests – and a Court grants – a stay of the obligations set forth in the *Order*, those obligations remain in effect and no incumbent LEC should be permitted by the Commission to violate effective Commission rules and regulations.

forth in *Order*. Specifically, BellSouth had been refusing to comply with the Commission's directive that "we require incumbent LECs, when space is legitimately exhausted in a particular LEC premises, to permit collocation in adjacent controlled environmental vaults or similar structures to the extent technically feasible"³ and that "the incumbent LEC must permit the new entrant to construct or otherwise procure such an adjacent structure, subject only to reasonable safety and maintenance requirements." As BellSouth's comments indicate, however, it now concedes the validity of the Commission's directives and, following its initial period of noncompliance, now allows CLECs to construct adjacent structures in which to collocate.⁴

Indeed, of all the incumbent LEC commenters, only Ameritech opposes the above requirements. This opposition is unsupportable, however, since it is founded upon the irrelevant notion that a controlled environmental vault does not constitute incumbent LEC "premises". The *Order* is very clear as to the obligation of incumbent LECs "to permit collocation in adjacent controlled environmental vaults or similar structures to the extent technically feasible."⁵ The Commission has further provided that "the incumbent LEC must permit the new entrant to *construct* or otherwise procure such an adjacent structure,"⁶ that is, to create a structure *which did not previously exist* when necessary to accomplish collocation. Thus, whether such adjacent structures would constitute incumbent LEC "premises" is of no logical significance. The obligation to permit adjacent collocation flows from the exhaustion of available space within the incumbent LEC's existing premises and nothing else. The remainder of Ameritech's argument, that the adjacent

³ *First Report and Order*, FCC 99-48 at ¶ 44.

⁴ BellSouth Corporation ("BellSouth") Opposition at 1.

⁵ *First Report and Order*, FCC 99-48 at ¶ 44.

⁶ *Id.*

collocation requirement would result in "'shantytowns' as collocation huts spring up by the flag pole and the dumpster and perilously close to the handicapped parking space",⁷ is a purely emotional ploy which the Commission can and should ignore. The *Order* itself protects against such an absurd result by acknowledging that adjacent collocation arrangements may be affected by "zoning and other state and local regulations".⁸

Sprint also asks the Commission to reaffirm that incumbent LECs may not limit the ability of requesting carriers to collocate their equipment at any unused space within the central office sufficiently large to accommodate that equipment. The incumbent LEC commenters indignantly oppose this concept, ignoring the essence of the Commission's holding: "a competitive LEC must be able to purchase collocation space sufficient, for example, to house only one rack of equipment," and incumbent LECs are required to make collocation space available in amounts directly correlating to the needs of the requesting carrier.⁹ If that amount of unused space happens to be located between two existing pieces of incumbent LEC equipment, it is nonetheless subject to the Commission's unconditional requirement that "an incumbent LEC must give competitors the option of collocating equipment in *any unused space* within the incumbent's premises."¹⁰

Ameritech erroneously asserts that an incumbent LEC's ability to require collocation in specific designated areas is limited only by a prohibition against increasing collocater costs, causing implementation delays or prematurely creating a space exhaustion situation, an interpretation clearly in conflict with the obligations set forth in the *Order*. While it is true, as BellSouth points

⁷ Ameritech Opposition at 4.

⁸ *First Report and Order*, FCC 99-48 at ¶ 44.

⁹ *Id.* at ¶ 43.

¹⁰ *Id.* at ¶ 42 (emphasis added).

out, that "the *Order* also made clear that the intent underlying the new collocation rules is to allow CLECs access to collocation space without artificially increasing their costs or delaying their time of entry,"¹¹ Ameritech necessarily ignores another very important purpose underlying the *Order*, namely, ensuring the advancement of competition by prohibiting incumbent LECs from insisting upon the erection of barrier walls or otherwise requiring the physical separation of competitors' equipment within incumbent LEC premises. That purpose would be hopelessly thwarted if an incumbent LEC were to retain the ability to unilaterally determine that its compliance with an FCC rule -- such as the directive that competitive carriers may collocate within any available central office space -- is not necessary because the incumbent LEC has implemented an alternate practice which in its paramount judgment is more appropriate than that set forth in the rule. And that, in a nutshell, is the attitude summed up by BellSouth when it admits, "[i]n many instances BellSouth has prepared collocation space that is separate from its equipment,"¹² and that "CLECs, including Sprint, should not be concerned with their placement within the central office."¹³

BellSouth's position, and its practice of assigning space to competing carriers within its central offices rather than allowing the carriers to collocate equipment in any available space, is unsupportable in light of the Commission's directive that

An incumbent LEC must give competitors the option of collocating equipment in any unused space within the incumbent's premises, to the extent technically feasible, and may not require competitors to collocate in a room or isolated space separate from the incumbent's own equipment.¹⁴

¹¹ Ameritech Opposition at 6.

¹² *Id.* at 2.

¹³ *Id.* at 3.

¹⁴ *First Report and Order*, FCC 99-48 at ¶ 42.

And in its usual strident fashion, U S WEST opposes Sprint's request for clarification that new entrants cannot be forced to accept segregated space within a central office by outrageously characterizing that request as tantamount to seeking a Commission pronouncement that incumbent LECs must be prohibited from protecting their network equipment.¹⁵ Citing "[n]etwork injuries caused by vandalism, negligence and the like, U S WEST apparently reserves to itself the right to violate the provisions of ¶ 42 of the *Order*, asserting that it "could not possibly give up the right to protect the security of its network simply to allow Sprint more collocation opportunities."¹⁶ The *Order*, however, in no way infringes upon U S WEST's right or ability to protect the security of its network. In fact, quite the opposite is true. In formulating its *Order*, including the prohibition against incumbent LECs' "requiring the construction of a room, cage, or similar structure"¹⁷ for competitor collocation the Commission carefully considered issues relating to network security, and has secured to incumbent LECs the ability to impose "reasonable security arrangements to protect their equipment and ensure network security and reliability."¹⁸ Specifically providing for the use of "security cameras or other monitoring systems, or to require competitive LEC personnel to use badges with computerized tracking systems,"¹⁹ the Commission has adequately protected U S WEST from the dangers which it purportedly fears. Thus, U S WEST is without justification for its unapologetically defiant attitude.

¹⁵ U S WEST Communications, Inc. ("U S WEST") Opposition at 4.

¹⁶ *Id.* at 4-5.

¹⁷ *First Report and Order*, FCC 99-48 at ¶ 42.

¹⁸ *Id.* at ¶ 46.

¹⁹ *Id.*

Sprint also asks the Commission to provide parameters by which incumbent LEC exercise of the ability to reserve central office space for its own use (thus making such space unavailable for new entrant collocation) may be evaluated. Pursuant to §51.323(f)(4) of the Commission's rules, an incumbent LEC may reserve such space, subject to the limitation that it may not do so on terms more favorable to itself than to its competitors. The rule specifically provides, however, that "[a]n incumbent LEC may retain a *limited* amount of floor space for its own *specific* future uses. . ."²⁰ At present, an incumbent LEC faces no obligation to demonstrate the *bona fides* of its space reservation, or the time within which the space will be actually utilized. TRA understands that incumbent LECs, like all carriers, have legitimate needs for additional space, however, some reasonable balance must be struck between the needs of competitors in need of collocation space and those of incumbent LECs seeking to reserve additional space. The present situation, which gives incumbent LECs carte blanche with respect to space reservation, is not a balance at all. The parameters suggested by Sprint, on the other hand, would provide some measure of protection for requesting carriers without unduly burdening incumbent LECs.

Not surprisingly, certain incumbent LEC commenters oppose Sprint's request as either unreasonable or unnecessary.²¹ Even in so doing, however, U S WEST acknowledges that there must be some limit on the period of time an incumbent LEC may extend out its network expansion plans,²² while Ameritech acknowledges that reservation of space must be accomplished

²⁰ §51.323(f)(4).

²¹ Ameritech Opposition at 8-9; U S WEST Opposition at 7-8; GTE Service Corporation ("GTE") Opposition at 2-4.

²² U S WEST Opposition at 8.

on a nondiscriminatory basis²³ -- a result not currently possible since incumbent LECs are always free to favor their own future expansion needs over the present collocation needs of their competitors. As the Commission is well aware, incumbent LECs are the only entities in a position to reserve as much central office space as they wish for future network expansion purposes; their competitors, on the other hand, are struggling to obtain even modest space for collocation. It is therefore highly reasonable to place some obligation upon an incumbent LEC, the entity in control of a very valuable commodity, to demonstrate that it is not inappropriately limiting competitor access to that commodity by overstating or exaggerating its future space needs, or simply failing to put sufficient effort into space planning to arrive at an accurate determination.

Accordingly, TRA supports Sprint's request for parameters on incumbent LEC space reservation as an appropriate means of promoting reasonable reservation of space by incumbent LECs. In the absence of some quantifiable means of determining how much space should legitimately be reserved for incumbent LEC use, and for how long such space will remain unavailable to competitors, incumbent LECs will retain the ability to arbitrarily reserve space for its own use without fear of reprisal.

TRA disagrees with the assertions of U S WEST and GTE, respectively, that Sprint's request for an outside time frame within which collocation arrangements must be completed is "based on nothing at all, other than Sprint's conclusion that ILECs might delay carrier collocation requests 'as a way of impeding competition,'"²⁴ and that "Sprint is trying to fix a problem that does not yet exist."²⁵ TRA's experience indicates clearly that, free from any obligation to complete

²³ Ameritech Opposition at 8.

²⁴ U S WEST Opposition at 9.

²⁵ GTE Opposition at 5.

collocation within some quantifiable period of time, incumbent LECs feel no pressure to timely accomplish collocation. Along with last-minute notifications of space unavailability, TRA's carrier members have been repeatedly and routinely subjected to multiple delays in completion of scheduled collocation activities. Thus, TRA fully supports Sprint's request that the Commission place an outside limit on the amount of time an incumbent LEC can force a competitor to wait for completion of collocation arrangements and urges the Commission to adopt minimum time completion guidelines of up to 90 days where space is already conditioned, and up to 180 days where unconditioned space is involved.²⁶

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to grant Sprint Corporation's Petition for Partial Reconsideration and/or Clarification in the manner and to the extent set forth herein.

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July 22, 1999

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²⁶ GTE Opposition at 6.

CERTIFICATE OF SERVICE

I, Enica Lewis, do hereby certify that a true a correct copy of the foregoing document has been served by the First Class Mail, postage prepaid, on the individuals listed below, on this 22nd day of July, 1999.

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